

(2011) 06 KL CK 0217

In the High Court Of Kerala

Case No : Criminal Rev. Petition No. 1398 of 2011

M.K. Lalitha

APPELLANT

Vs

C. Pavithran and The State of Kerala

RESPONDENT

Date of Decision : 01-06-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 357(1)
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2011) 06 KL CK 0217

Hon'ble Judges : V.K. Mohanan, J

Bench : Single Bench

Advocate : K.M. Firoz, for the Appellant; No Appearance, for the Respondent

Judgement

V.K. Mohanan, J.—The accused in a prosecution for the offence u/s 138 of the NI Act is the revision Petitioner. The challenge is against her conviction and sentence for the said offence.

2. As this Court is not inclined to interfere with the order of conviction, the learned Counsel for the revision Petitioner submitted that the Petitioner may be granted sufficient time to compensate the complainant. Having regard to the facts and circumstances involved in this case, I am of the view that the said submission requires positive consideration.

3. The cheque in question is dated 20.01.2007 and that too for an amount of Rs. 70,000/-. As per the findings of the courts below which approved by this Court, the said amount is due to the complainant and the same is with the revision Petitioner for the last 4 years. The apex court, in its recent decision in Damodar S. Prabhu v. Sayed Babalal H J.T. 2010 (4) SC 457, has held that in a case of dishonour of cheques, compensatory aspect of the remedy should be given priority over the punitive aspect. In the light of the above facts and the settled legal position, I am of the view that the sentence of imprisonment ordered against the revision Petitioner requires re-consideration particularly considering the fact that Petitioner is a lady. According to me, while granting some time to

pay compensation amount, the interest of the complainant has also to be protected.

In the result, this revision petition is disposed of confirming the conviction of the revision Petitioner u/s 138 of the NI Act as recorded by the courts below. Accordingly, the sentence of imprisonment fixed by the trial court and confirmed by the appellate court is set aside and the Petitioner is sentenced to pay a fine of Rs. 84,000/- within 2 months from today and in default she is directed to undergo simple imprisonment for a period of 2 months. Accordingly, the revision Petitioner is directed to deposit the fine amount on or before 01.8.2011. If there is any failure on the part of the revision Petitioner in complying with above direction, the trial court is free to take steps to execute the sentence and for realisation of fine amount. On realisation of the fine amount a sum of Rs. 80,000/- shall be paid to the complainant as compensation u/s 357(1)(b) of Code of Criminal Procedure and the remaining amount of Rs. 4,000/- shall be deposited in the State Exchequer. Coercive steps if any pending against the revision Petitioner shall be deferred till 1st August, 2011.

The Crl.R.P is disposed of accordingly.